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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 425

LUKE MANION,

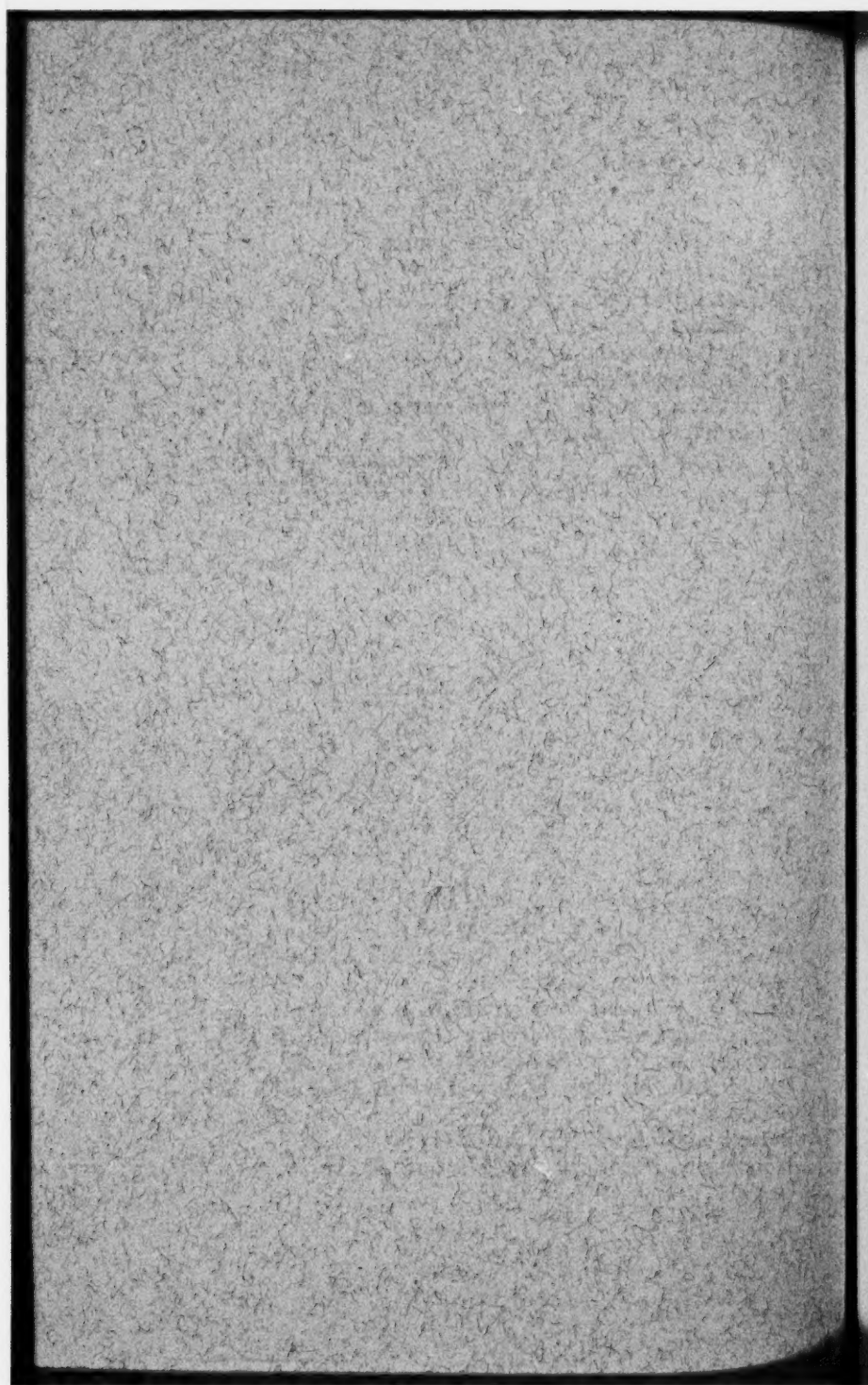
Petitioner,

vs.

**STATE OF MICHIGAN AND G. DONALD KENNEDY,
MICHIGAN STATE HIGHWAY COMMISSIONER.**

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN.**

EUGENE F. BLACK,
Counsel for Petitioner.



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**PETITION FOR WRIT OF CERTIORARI TO THE
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MAY IT PLEASE THE COURT:

The petition of Luke Manion, a resident of Marine City, Michigan, respectfully shows to this Honorable Court:

Opinions Below.

The opinion of the Supreme Court of Michigan, which is the basis of the judgment petitioner seeks to have this Court review, was handed down September 8, 1942 (R. 22).¹ It is not as yet officially reported but appears commencing on page 22 of the certified record. The opin-

¹ Counsel for petitioner is about to be called into the Naval service; hence the immediate preparation and filing of this petition.

ions of the Michigan Court of Claims, in which court this case originated, are not officially reported. The opinion of that court appears commencing on page 11 of the certified record.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended (28 U. S. C. A., sec. 344).

Questions Presented.

1. Is a State court, which holds exclusive jurisdiction to hear and determine all claims and demands, *ex contractu* and *ex delicto*, against a sovereign State (Michigan), obliged to follow and apply the maritime law of the United States in determining whether, in an action brought therein under the Jones Act for commission of a maritime tort, the defendant State may rely on a pleaded defense of Governmental immunity *from liability*?
2. In the same circumstances, does the maritime law of the United States recognize or permit any such pleaded defense?

Summary Statement of the Matter Involved.

The Michigan Court of Claims, in which this suit originated, was created by Legislative Act in 1939 (Mich. Stat. Ann. 27.3548). The Act will be referred to herein as the "Court of Claims Act".² By Section 8 of such Act the Court of Claims was granted exclusive power and jurisdiction: "To hear and determine all claims and demands, liquidated and unliquidated, *ex contractu* and *ex delicto*, against the State (Michigan) and any of its departments, commissions, boards, institutions, arms, or agencies."

² Summarized in appendix.

On June 8, 1939, petitioner, a seaman, was in employ of the respondent State Highway Commissioner as Chief Engineer of the steam vessel "St. Ignace", which vessel, at the time of commission of the tortious acts hereinafter mentioned, was owned and operated by the respondent State Highway Commissioner and was engaged as a marine carrier in ferrying vehicles, passengers and freight for consideration across the navigable waters of the Straits (of Mackinac) which navigably join Lakes Michigan and Huron (R. 3, 4). These marine operations were being carried on in pursuance of statute (Mich. Stat. Ann. 9.1391).

While petitioner was off duty, and standing on the main deck of the vessel, and while the vessel was on voyage across the Straits, a collision occurred between the "St. Ignace" and another steam vessel, the "City of Cheboygan", which second vessel was similarly owned and operated by the respondent State Highway Commissioner, was similarly engaged, and was then proceeding on opposite directional course in and over the same waters (R. 3). The collision, without negligence on the part of the petitioner, was solely caused by negligence of the officers and navigating seamen of both vessels, which negligence largely consisted of excessive speed in a dense fog in violation of federal navigation rules (R. 4, 5). As a result of such collision, petitioner was personally injured and damaged (R. 5, 6).

Counting on the maritime tort so committed against him, petitioner duly instituted action in the aforesaid Court of Claims, and asked judgment against the defendant State and State Highway Commissioner in the sum of \$19,500.00 (R. 6, 7). Petitioner's Statement of Claim (otherwise termed "petition" in the Court of Claims Act), by which this action was instituted in the Court of Claims, concluded with special

setting up of, and reliance upon, the general maritime law and "the statutes of the United States relating to navigation and liability of steam vessel owners and operators for negligently inflicted injuries to seamen." (R. 6).

Within the time allowed for such motions, the respondents (defendants below) moved to dismiss petitioner's statement of claim for the single reason that:

"The said defendants, at the time and place of the grievances set forth in said petition, were engaged in the performance of a Governmental function and are not liable for the alleged negligent or tortious acts of such officers, agents, or employees." (R. 9).

The respondents (defendants below) concede that, by the Court of Claims Act, Michigan's sovereign immunity *from suit* brought against it in that Court was and is unconditionally waived (R. 12). They contend, however, in support of the foregoing motion to dismiss, that a sovereign state originally possessed and now possesses (over and above the presently waived immunity from suit) a defense of immunity *from liability* for *maritime* torts, and that such defense of immunity *from liability* has never been waived so far as Michigan is concerned.

The Court of Claims upheld the motion to dismiss and entered judgment for respondents. Petitioner thereupon duly appealed to the Supreme Court of Michigan and that court, by 5 to 2 vote, upheld the judgment of the Court of Claims.

Specification of Errors.

1. The Supreme Court of Michigan erred in denying to petitioner, a seaman, his specially set up and claimed right of action under Federal statutes and maritime rules which prescribe the rights of seamen who are injured, by actionable negligence, on the federally justiciable waters of the Great Lakes.

2. The Supreme Court of Michigan erred in holding that a local defense of Governmental immunity from liability extends to and wipes out the right of action of an injured seaman that is provided by the Jones Act.

3. The Supreme Court of Michigan erred in holding that the defense of sovereign immunity from liability, as created by local law in non-maritime cases, is determinative of maritime rights in a suit planted on the maritime law.

4. The Supreme Court of Michigan erred in refusing to apply the maritime law of the United States, as defined by this Court, in determining the issue raised by respondents' motion to dismiss.

Statement Disclosing Basis of Jurisdiction to Review the Judgment of the Supreme Court of Michigan.

Petitioner, a seaman, specially set up and claimed, in the only court which holds jurisdiction over the respondents (R. 36-37), a right of action for personal injuries under the Jones Act (June 5, 1920; 41 Stat. 1007).³ The Jones Act is embraced within and constitutes a part of the general maritime law (*The Arizona v. Anelich*, 298 U. S. 123). Petitioner's right of recovery under the Jones Act was denied to him, by the successive decisions of the courts below, for assigned reason that the respondent State is possessed of an absolute defense of immunity *from liability* which it may interpose against an action so planted on the Jones Act. Petitioner has thus been clearly denied, by a State court of last resort, a right and privilege which

³ *Recovery for injury to or death of seaman.* Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; " " " (46 U. S. C. A., sec. 688).

he has specially set up and claimed under specific statutes of the United States, and this case is consequently brought within the applicable terms of Section 237 (b) of the Judicial Code as amended.

Aside from the above, the Supreme Court of Michigan has erroneously interpreted the maritime law of the United States to the prejudice of petitioner. That court's majority has rather surprisingly applied the dissenting opinion in *Workman v. New York City*, 179 U. S. 552, rather than the prevailing opinion in that case, as determinative of the applicable maritime law, and petitioner has consequently been denied a maritime right of action which, under the maritime law, he has a clear right to prosecute in the court which holds jurisdiction over his presently suable maritime employer (Michigan).

Since:

(a) The State courts below were and are, "equally with the courts of the Union, obliged to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them" (*United States v. Bank of New York and Trust Co.*, 296 U. S. 479);

(b) The State courts "have jurisdiction, concurrently with the federal courts, to enforce the right of action established by the (Jones) Merchant Marine Act as a part of the maritime law" (*Engel v. Davenport*, 271 U. S. 33);

(c) The Michigan Court of Claims has exclusive jurisdiction to hear and determine tort claims against Michigan (R. 36-37), and

(d) The respondents freely admit, as they must, that Michigan by the same Court of Claims Act has expressly

waived its sovereign immunity *from suit* brought against it in such Court of Claims;

the Supreme Court of Michigan has, by its decision below, denied petitioner's rights under the Jones Act and has refused to apply, as determinative of the pleaded defense of Governmental immunity *from liability*, the applicable maritime law of the United States which was clearly expounded in the *Workman* case (179 U. S. 552).

On the foregoing premises, petitioner respectfully submits that this court's jurisdiction to review by certiorari, under 237 (b) of the Judicial Code, is clear.

Special Jurisdictional Statement (Rule 12).

Petitioner's (Federal) right under the Jones Act, which he seeks to have brought before this Court for review, was set up in the court of first instance (Mich. Court of Claims) by express pleading and reliance on the same (R. 6). That Court of original jurisdiction expressly recognized petitioner's reliance on the maritime law as enlarged by the Jones Act (R. 12), but held the local law to be decisive (R. 13). Petitioner thereupon preserved for review his claimed Federal right as aforesaid by assigning as error, on appeal to the Supreme Court of Michigan, the denial thereof (R. 1, 2).

The Supreme Court of Michigan duly reviewed the foregoing specifications of error and, having recognized the superiority of maritime law in maritime cases, nevertheless held that the maritime law does not, in present circumstances, preserve to a seaman the (Federal) right so claimed (R. 38).

The question so decided is substantial. It seriously affects the maritime rights of all seamen who happen to be injured or damaged by negligence in the course of Mackinac ferry operations, regardless of whether they are employed

by Michigan or not. For details in support of these representations, petitioner respectfully refers to the annexed memorandum.

Reasons Relied On for Allowance of Writ.

First: This is a case where a seaman's right of action under the Jones Act has been refused due hearing on the merits by a court holding jurisdiction to hear and determine the same. That right has been denied solely because the defendant State, as owner of the vessels involved and as petitioner's maritime employer, has interposed a defense which is not recognized by the maritime law, viz., Governmental immunity *from liability*.

We are not here concerned with any question of jurisdiction over the defendant State. The latter had admittedly, by the Act which created this Michigan Court of Claims, waived its immunity *from suit* in that court (R. 12, 13). The distinction is recognized by the majority opinion below (R. 35) and it was conceded by respondents' counsel from the very outset (R. 12) that the Michigan Court of Claims held jurisdiction to hear and determine this seaman's right of action subject only to a pleaded defense,—a defense of claimed immunity *from liability* which the defendant State contends it may interpose or omit at its pleasure. Thus the question was squarely presented to the court below:

Does the maritime law recognize or permit such a defense in a case that is planted on the maritime law?

The Supreme Court of Michigan answered by saying that it "preferred to follow the reasoning of Mr. Justice Gray in the Workman case, who with Mr. Justice Brewer, Mr. Justice Shiras, and Mr. Justice Peckham, dissented" (R. 37-38).

Petitioner, in turn, respectfully submits that the Supreme Court of Michigan was duty bound to follow this

court's prevailing opinion in the Workman case, wherein the applicable maritime rule was tersely summed up as follows:

"It results that, in the maritime law, the public nature of the service upon which a vessel is engaged at the time of the commission of a maritime tort affords no immunity from liability in a court of admiralty, where the court has jurisdiction."

Second: A vital question respecting maritime rights is presented by this petition for certiorari. The decision below will, if not reviewed, result in complete frustration and denial of maritime rights which are bound to arise in favor of passengers and shippers, the persons and goods of which are, for paid tolls accruing to Michigan (Mich. Stat. Ann. 9.1391), hourly carried across the Straits of Mackinac (8 miles course) by the vessels of the Michigan State Highway Department.

Furthermore, since the Straits of Mackinac constitute one of the busiest freight and passenger vessel arteries in the world, the rights of Great Lakes vessel owners and seamen, in collision cases arising out of the negligent navigation of these Highway Department ferry boats, will be prejudicially affected and denied by the decision below if same remains unchallenged.

In above connection it should be borne in mind that the Michigan Court of Claims is the only forum which may hear and determine maritime claims of like nature. By the Eleventh Amendment, a State is immune *from suit* in the courts of the United States, both in rem and in personam (*Ex Parte State of New York*, 256 U. S. 493; *Missouri v. Fiske*, 290 U. S. 18), and Michigan is similarly immune in her own Constitutional courts (*Longstreet v. Mecosta*, 228 Mich. 542). In view of these incontrovertible premises, the drastic effect of the decision below is apparent.

Third: The decision below exhibits a shocking injustice to seamen employed by Michigan. They are not eligible to compensation (in cases of maritime injury) under local compensation laws (*Minnie v. Port Huron Terminal Co.*, 295 U. S. 647), and they are expressly excluded, by sections 902(3) and 903(1,2), from operation of the Longshoremen's and Harbor Workers' Compensation Act.⁴ Although they are wards of admiralty, and although the Jones Act was enacted for their protection and benefit (*The Arizona v. Anelich*, 298 U. S. 123), the decision below holds the Jones Act is ineffective as to them even in a court which admittedly is possessed of jurisdiction over the defendant State employer. The result is, under the decision below, that a seaman employed by Michigan (and his dependents in turn) is absolutely remediless even in cases where the grossest sort of negligence on the part of his employer has caused him to suffer injury or death.

In conclusion, petitioner respectfully submits that the interposition of this Honorable Court, by its writ of certiorari to review an obvious denial of a maritime right by a State court having jurisdiction and duty to guard and uphold that right, is plainly indicated.

⁴ "(3) The term 'employee' does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net." (33 U. S. C. A., sec. 902 (3)).

"No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof." (33 U. S. C. A., sec. 903 (1, 2)).

Conclusion.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this honorable court, directed to the Supreme Court of Michigan, commanding that court to certify and to send to this court, for its review and determination, on a day certain therein named, a full and complete transcript of record and all proceedings in the case numbered and entitled on its docket, No. 41909, Luke Manion, claimant and appellant, against State of Michigan et al., defendants and appellees, and that the aforesaid judgment of the Supreme Court of Michigan may be reversed by this honorable court, and that petitioner may have such other and further relief in the premises as to this honorable court may seem meet and just.

Petitioner will ever pray, etc.

LUKE MANION,
By EUGENE F. BLACK,
Counsel for Petitioner.

Dated—September 14, 1942.

OUTLINE COURT OF THE UNITED STATES

1901-1902 TERM

No. 425

1901-1902 TERM

1901

First. The Court will adjudge that the a wife
who was with her husband at the time of his
death is one of the persons who are entitled to
the estate of the husband, and that the estate
shall be divided between the wife and the children
in equal shares.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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STATE OF MICHIGAN AND G. DONALD KENNEDY,
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**MEMORANDUM SUPPORTING PETITION FOR WRIT
OF CERTIORARI.**

The "Reasons Relied On For Allowance Of Writ," as set forth in the within petition, constitute in themselves a compendious and comprehensive brief for review of this most important maritime question. However, petitioner wishes to add the following argument for assumption of jurisdiction by this Court:

First: This Court will judicially notice that the 8 mile wide water way which joins Lake Michigan with Lake Huron is one of the busiest marine highways in the world. During the season of navigation, which normally extends from April first to December first, scores of freight ves-

sels are passing daily through these Straits (of Mackinac). Directly across the normal courses of these vessels lie the to and fro courses of the ferry vessels that are owned and operated by the Michigan State Highway Department. These ferry vessels operate each way on an hourly basis and, during the summer vacation periods especially, they are constantly jammed with vehicles, freight and passengers passing from one Michigan peninsula to the other. The Michigan Highway Department charges a regular toll for passage and shipment, and is required to keep its tolls at such figure as will insure defrayment of the cost of maintenance and operation (Mich Stat. Ann. 9.1394).

Necessarily, marine rights and liabilities are vitally involved in such ferry operations. By the very enabling statute (Mich. Stat. Ann. 9.1394), the Michigan Highway Commissioner is made "the agent of the State for the purpose of complying with the federal navigation laws" (sec. 3). Necessarily, the Highway Department hires many seamen to operate its fleet. As seamen, they should receive the same rights as are guaranteed other seamen whose vessels are constantly passing ahead and astern.

Despite the fact that their rights are supposed to be judged by the maritime law, and despite the fact that a maritime injury which is inflicted on him by his employer's negligence creates in favor of a seaman the right to prosecute, in any State or Federal court of competent jurisdiction, an action under the maritime law as enlarged by the Jones Act, the decision below singles out State (of Michigan) employed seamen and says that they have no remedy whatever against their employer, under the maritime law, even though injury or death may come to them through the most culpable kind of actionable negligence and even though a specified court, by an unconditional waiver of immunity *from suit* brought therein, has ap-

propriate jurisdiction over that employer. Bearing in mind that a seaman so injured at sea has no other remedy,⁵ this bare statement of the situation is believed sufficient to provoke vigorous inquiry.

Second: It may and should be bluntly declared here that if this pleaded defense is not good in the maritime courts, it is equally not good in the State courts. The latter are just as much bound to follow the maritime law in maritime cases as the courts of the Union are (*Southern Pac. v. Jensen*, 244 U. S. 205; *Knickerbocker Ice Co. v. Stewart*,⁶ 253 U. S. 163; *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647⁷; *United States v. Bank of New York & Trust Co.*, 296 U. S. 479). The Supreme Court of Pennsylvania, in *Garrett v. Moore-McCormick Co.* (Jan. 5, 1942), 23 Atl. (2) 504, has but recently recognized this obligation. To quote syllabus #2 of last cited case:

"Where injured seaman, seeking recovery pursuant to the Jones Act for damages for negligence and for maintenance and care under the admiralty law, brought suit in the State Court, the State court had duty to apply the federal law creating the right of action, in the same sense in which the law would have been applied in the federal courts".

⁵ A seaman cannot be granted compensation under a local compensation act for a maritime injury (*Minnie v. Port Huron Terminal Co.*, 295 U. S. 647), and he is expressly excluded, by sections 902 (3) and 903 (1, 2) from operation of the Longshoremen's and Harbor Workers' Compensation Act. See, in connection with such express exclusion of seamen, *Warner v. Goltra*, 293 U. S. 160, and *South Chicago Coal and Dock Co. v. Bassett*, 309 U. S. 257.

⁶ "Obviously, if every state may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which framers of the Constitution both foresaw and undertook to prevent."

⁷ "We have held that the case of an employee injured upon navigable waters while engaged in a maritime service is governed by the maritime law. *Southern P. Company v. Jensen*, 244 U. S. 205; *Grant-Smith-Porter Ship Company v. Rohde*, 257 U. S. 469."

Third: The maritime law does not sanction any such result. 41 years ago this Court decided an important and decisive maritime case which has since remained unchallenged until the decision below was handed down. Reference is made to *Workman v. New York City*, 179 U. S. 566, where this Court definitely held that the maritime does not recognize a defense of immunity *from liability* which is planted on the doctrine of "governmental function". That decision of this Court has not been followed by the court below, the majority of which "preferred to follow the reasoning" of the dissenting opinion as delivered by Mr. Justice Gray (179 U. S. 574).

As to *Detroit v. Osborne*, 135 U. S. 492, which the majority below relied upon in making decision, it is sufficient to say that it is not a maritime case and does not purport to decide a maritime question (an injury sustained on a Detroit sidewalk was involved). The case was not cited or relied upon in any way by respondents' counsel below.

Fourth: This Court, in the *Workman* case, was not merely deciding that a *municipal corporation* may not rely, as a matter of maritime law, on the defense pleaded here. It fairly decided that such a defense *is not and will not be recognized in maritime cases*. Witness the exhaustive review⁸ of relevant English and American maritime cases which commences on page 566 and ends on page 568 of the report with this summation:

"The statement of the maritime law of England on the subject now being considered made in *The Siren*, supra, makes it clear that, in harmony with the maritime law of this country, the fact that a wrong has been committed by a public vessel of the crown affords no ground for contending that no liability arises,

⁸ Reference is made, of course, to the prevailing opinion in the *Workman* case.

because of the public nature of the vessel, although, it may be, in consequence of a want of jurisdiction over the sovereign, redress cannot be given."

Again alluding to the fact that the Michigan Court of Claims admittedly held jurisdiction over the defendant sovereign by and through the Michigan Court of Claims Act,⁹ it would appear that the decision below is in direct conflict with the *Workman* case.

Fifth: Singularly enough, petitioner might express his agreement with every thing said by the majority below and still be in a position to point out a clear denial of a federal right. In the majority opinion below it is first said (referring to Sec. 24 of the Court of Claims Act¹⁰):

"I construe this to mean that the State's immunity from liability while engaged in a governmental function is preserved because the waiver of this defense would enlarge the 'present liabilities of the State'".

This observation by Mr. Justice Bushnell is right enough as a general statement, but it is quite immaterial in a maritime case because, as we have seen by the *Workman* case, Michigan never had a maritime defense "of liability while engaged in a governmental function" to preserve by said Sec. 24. All Sec. 24 did was to preserve defenses Michigan might originally have relied upon if and where, by waiver of immunity from suit, it became suable, and the majority below does not contend otherwise. Michigan undoubtedly had such a defense of "governmental function" in non-maritime cases to preserve by said Sec. 24 (Cf. *Longstreet v. County of Mecosta*, 228 Mich. 542), but it never had such a defense (per the *Workman* case) to pre-

⁹ Summarized in appendix hereof.

¹⁰ "This act shall in no manner be construed as enlarging the present liabilities of the State and any of its departments, commissions, boards, institutions, arms or agencies."

serve in a maritime case. Hence said Sec. 24 relevantly preserved nothing.

Mr. Justice Bushnell (writer of the majority opinion below), when he again referred to said Sec. 24, said:

“All those defenses which might have been interposed in actions at law and chancery remain unchanged save only the immunity from suit.” (R. 37).

Petitioner agrees and says that, in similar maritime cases, the defense pleaded here never could have been interposed by Michigan. To prove the point, let us visualize, before enactment of the Court of Claims Act, the same suit commenced by petitioner under the Jones Act in a District Court of the United States, with the respondent State formally waiving its immunity *from suit* but pleading the instant defense of immunity *from liability*. Would the pleaded defense have been good? The *Workman* case plainly answers “no”.

Sixth: This is not a case where a State court has, by construction of State legislation, decided a case without offending a federal right. The court below has squared off on the merits of a maritime question and has decided that the maritime law does, or should, sanction this defense against a State employed seaman's right of action under the Jones Act. A federal question of substance has thus been decided by a State court of last resort, and petitioner asserts with due respect that it has been decided in a way not in accord with an applicable decision of this court (Rule 38, sub-section 5).

Respectfully submitted,

EUGENE F. BLACK,
Counsel for petitioner,
Michigan National Bank Bldg.,
Port Huron, Michigan.

September 14, 1942.

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